

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE SECOND AMENDMENT TO THE PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF MILPITAS AND THE MILPITAS UNIFIED SCHOOL DISTRICT REGARDING THE MCCANDLESS PROPERTY LOCATED ON THE CORNER OF MCCANDLESS DRIVE AND PENITENCIA CREEK EAST CHANNEL

WHEREAS, on October 21, 2016, the City of Milpitas (“City”) and the Milpitas Unified School District (“District”) entered into the Purchase and Sale Agreement pursuant to which the District would be purchasing 6.668 acres of a 10.9 acre City owned property commonly referred to as the McCandless property; and

WHEREAS, on October 6, 2015, the City and District entered into the First Amendment to the Purchase and Sale Agreement to extend the close of escrow date; and

WHEREAS, the District intends to use the property it acquired from the City for the construction and operation of a new K-6 elementary school, and the City intends to use the remaining property on the site it retains ownership over for a City park; and

WHEREAS, a portion of both the District property and City property is the subject of a joint use agreement for recreational activities; and

WHEREAS, the City and District now desire to further amend the Purchase and Sale Agreement to provide clarity on updated information on (i) the amount to be credited to the District for environmental clean-up reimbursement and (ii) the revised process for payment of the Purchase Price mutually agreed to by the Parties.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby approves the Second Amendment to the Purchase and Sale Agreement between the City of Milpitas and the Milpitas Unified School District for the McCandless Property, attached hereto as Exhibit A.
3. The City Manager, or his designee, is authorized to execute the Second Amendment, attached hereto as Exhibit A, with any amendments deemed necessary by the City Attorney, and to execute all other documents in association with close of escrow.

PASSED AND ADOPTED this _____ day of _____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

DRAFT

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

**BETWEEN
CITY OF MILPITAS
AND
MILPITAS UNIFIED SCHOOL DISTRICT**

This Second Amendment to Purchase and Sale Agreement, dated August 16, 2016 (the "Effective Date"), is entered by and between the Milpitas Unified School District, a public school district organized and existing under the laws of the State of California ("District") and the City of Milpitas, a municipal corporation of the State of California ("City") (collectively, the "Parties"). All terms capitalized herein shall have the same meaning as in the Purchase Agreement.

1. Background.

1.1 District and City entered into a Purchase and Sale Agreement dated October 21, 2014, and amended by the First Amendment to Purchase and Sale Agreement dated October 6, 2015 (as amended, the "Purchase and Sale Agreement").

1.2 Pursuant to the Purchase and Sale Agreement, City is selling to District and District is purchasing from City approximately 6.7 acres of the 10.9 acre City property located on the corner of McCandless Drive and Penitencia Creek East Channel, in the City of Milpitas, County of Santa Clara, as further described in Exhibit B of the Purchase Agreement ("School Property").

1.3 The total purchase price for the School Property is Twenty Million Six Hundred Seventy Thousand and Eight Hundred Dollars (\$20,670,800.00).

1.4 District has deposited \$50,000 to Escrow Holder on November 21, 2014 in compliance with Section 1(1) (b) of the Purchase and Sale Agreement.

1.5 District has completed environmental clean-up of contaminated soil on the Property and the City gives a credit to the District against the Purchase Price for verified actual clean-up costs as of Closing.

1.6 The Parties desire to provide Escrow Holder updated information on (i) the amount to be credited to the District for environmental clean-up reimbursement and (ii) the revised process for payment of the Purchase Price mutually agreed to by the Parties.

1.7 Under Section 19 of the Purchase and Sale Agreement (Delegation of Authority) and the October ____ and October 21, 2014 resolutions of the governing bodies of both City and District, the City Manager and the District Superintendent or her designee are duly authorized to take all actions and execute all documents necessary to complete the purchase and sale of the School Property.

2. Payment of Purchase Price.

2.1 Purchase Price. The Purchase Price to be paid by the District to the City for the School Property is Three Million One Hundred Thousand Dollars (\$3,100,000.00) per acre for 6.668 acres, for a total of Twenty Million Six Hundred Seventy Thousand and Eight Hundred Dollars (\$20,670,800.00).

2.2 Installment Payments. Instead of the original process contemplated in Section 1(c) of the Purchase Agreement that the balance of the Purchase Price be paid in a lump sum at or before Close of Escrow, the Parties hereby agree that payment of the Purchase Price shall be paid 50% at Closing as a down payment ("Down Payment") and 50% as established in the Promissory Note, described in Section 2.3 below. The Down Payment shall include District's deposit of \$50,000.00 into Escrow made on November 21, 2014.

2.3 Promissory Note. The District shall sign a promissory note, secured by a deed of trust, to be paid at maturity of 12 months, in the amount of \$10,335,400.00, with 0% interest, in the form of promissory note attached hereto as Exhibit E ("Promissory Note"). At the Close of Escrow, the following credits toward the Purchase Price shall be applied toward prepayment of the Promissory Note:

(a) Full reimbursement for the cost of environmental clean-up to be credited to District provided that supporting documentation, including invoices, contracts, and any other information requested by City verifies the costs incurred by District. Costs shall not be credited for environmental clean-up unless City determines such costs actually incurred by District through supporting documentation. City shall not reimburse District for any costs related to environmental clean-up incurred after the effective date of this Second Amendment to Purchase and Sale Agreement.

(b) Other credits as agreed to by the Parties or as listed in the Purchase and Sale Agreement, if any.

3. **Close of Escrow.** Close of Escrow shall occur on a date mutually agreed to by the Parties on or before October 21, 2016.

4. Miscellaneous.

4.1 Cooperation. The District and City agree to cooperate in the transfer of ownership of the School Property in a manner that facilitates commencement of construction of the new elementary school in a timely manner.

4.2 Ratification. This Amendment shall not be effective unless ratified by the District's governing board and approved by City's City Council.

4.3 Modification of this Amendment. This Amendment shall not be modified except by written instrument executed and approved by the Parties in the same manner as this Amendment.

4.4 Choice of Law; Venue. The formation, interpretation and performance of this Amendment shall be governed by the laws of the State of California.

4.5 Entire Agreement. This Amendment and the Promissory Note, including the deed of trust, set forth the entire agreement among the Parties with respect to the subject matter herein and supersedes all other oral or written provisions with respect thereto.

4.6 Authority of Signatories. Each person signing this Amendment is duly authorized and has legal capacity to execute and deliver this Amendment. Each Party represents and warrants to the other that the execution and delivery of this Amendment is a valid and legal agreement enforceable in accordance with its terms.

4.7 Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

4.8 Escrow Holder. District and City shall deliver a copy of the fully executed Amendment to Escrow Holder prior to the Close of Escrow.

IN WITNESS WHEREOF, the Parties hereto have executed this Second Amendment effective as of the date first written above.

DISTRICT

Milpitas Elementary School District

By: _____ Date: _____

Name: Cheryl Jordan

Title: Interim Superintendent

CITY

The City of Milpitas

By: _____ Date: _____

Name: Thomas C. Williams

Title: City Manager

EXHIBIT E – PROMISSORY NOTE

[To be attached]

DRAFT

**PROMISSORY NOTE
SECURED BY DEED OF TRUST**

Date: August 16, 2016
City of Milpitas, CA 95035

\$10,335,400

FOR VALUE RECEIVED, the undersigned Milpitas Unified School District, a public school district organized and existing under the laws of the State of California ("Borrower"), promises to pay to the City of Milpitas and its assigns ("Lender"), or to Lender's order, at 455 East Calaveras Boulevard, 3rd Floor, Milpitas, California, 95035, or at such other place as Lender may from time to time designate by written notice to Borrowers, the principal sum of Ten Million Three Hundred Thirty-Five Thousand Four Hundred Dollars (\$10,335,400) secured by a Deed of Trust in the form attached hereto as **Exhibit A**, in lawful money of the United States of America as hereafter set forth.

1. **BACKGROUND.**

- 1.1. District and City entered into a Purchase and Sale Agreement dated October 21, 2014, amended by the First Amendment to Purchase and Sale Agreement dated October 6, 2015, and the Second Amendment to Purchase and Sale Agreement dated _____ (as amended, the "Purchase and Sale Agreement"). Pursuant to the Purchase and Sale Agreement, City is selling to District and District is purchasing from City approximately 6.7 acres of the 10.9 acre City property located on the corner of McCandless Drive and Penitencia Creek East Channel, in the City of Milpitas, County of Santa Clara, as further described in Exhibit B of the Purchase Agreement ("School Property").
- 1.2. The Second Amendment to Purchase and Sale Agreement provides that District shall pay a portion of the Purchase Price over two years as defined in this Promissory Note.
- 1.3. Capitalized terms not defined in this Promissory Note shall have the meaning given to them in the Purchase and Sale Agreement.

2. **DEFINITIONS.** The following definitions shall apply throughout this Promissory Note:

- 2.1. **Borrower.** Milpitas Unified School District, a public school district organized and existing under the laws of the State of California. and their successors and assigns.
- 2.2. **Lender.** City of Milpitas, a municipal corporation of the state of California, and its successors and assigns.
- 2.3. **Property.** The following described property located in the County of Santa Clara, State of California, as described in **Exhibit B**.

3. **INTEREST.** Absent a continuing Event of Default hereunder or the Deed of Trust, the Loan made hereunder shall not bear interest on the unpaid principal amount.

4. **DEFAULT INTEREST.** Upon the occurrence, and during the continuance, of an Event of Default, including the failure to pay upon final maturity, Lender, may at its option and in its sole

discretion: (i) impose an interest rate on this Note not more than Six percent (6.00%) per annum ("Default Interest Rate") and (ii) add any unpaid accrued interest to principal and such sum will bear interest therefrom until paid at the Default Interest Rate. The undersigned acknowledges that, during the time that any amount is in default, Lender will incur losses that are impracticable, costly, and inconvenient to ascertain. Those losses include, without limitation, the ability to invest amounts then due at the current rate of return and the unavailability of liquid funds. The undersigned agrees that the interest payable hereunder represents a reasonable sum considering all of the circumstances existing on the date of the execution of this Note and represents a reasonable estimate of the losses Lender will incur by reason of late payment. The undersigned further agrees that proof of actual losses would be costly, inconvenient, impracticable, and extremely difficult to fix. Acceptance of the interest will not constitute a waiver of the default with respect to the overdue installment and will not prevent Lender from exercising any of the other rights and remedies available under this Note and/or the Deed of Trust. Notwithstanding anything contained herein, the Default Interest Rate will not exceed the maximum rate permitted by applicable law. Default interest shall be calculated on a 30/360 simple interest basis, that is, with the exception of odd days in the first payment period, monthly interest is calculated by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by a month of 30 days. Interest for the odd days is calculated on the basis of the actual days to the next full month and a 360-day year.

4. **DUE ON SALE OR TRANSFER.** The Deed of Trust contains the following limitation on the right of Borrower to transfer the Trust Estate (as defined in the Deed of Trust):

“ Transfer of Trust Estate by Trustor. In order to induce Beneficiary to make the loan, Trustor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Beneficiary, Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such Transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor (if any) of the Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, “Transfer” shall mean:

- (a) any sale, transfer, conveyance, assignment, hypothecation, mortgage, encumbrance, lease (except as expressly permitted by the Note and Deed of Trust) or vesting of the Trust Estate or any part thereof or interest therein to or in any person, firm or entity, whether voluntary, involuntary, by operation of law, or otherwise, provided, however, that the foregoing shall not include the granting of utility easements in the normal course of Trustor’s business;
- (b) any merger, consolidation, bankruptcy or dissolution of Trustor;
- (c) any sale or transfer of substantially all of the assets of Trustor; and
- (d) the execution of any agreements to do any of the foregoing.”

5. **AMOUNT AND TIME OF PAYMENT.** The Principal Sum shall be due, in lump sum, twelve (12) months from the Note date.

6. **PREPAYMENT.** Borrower shall have the right at any time to prepay the Principal Amount of this Promissory Note. The Principal Amount of this Promissory Note shall be deemed paid in full when prepayments equal the Principal Sum. Lender may grant credits toward the prepayment of the Promissory Note based on reimbursement for the cost of environmental clean-up to be credited to District provided that supporting documentation, including invoices, contracts, and any other information requested by Lender verifies the costs incurred by Borrower. Costs shall not be credited for environmental clean-up unless Lender determines such costs actually incurred by District through supporting documentation. Lender shall not reimburse Borrower for any costs related to environmental clean-up incurred after the effective date of the Second Amendment to Purchase and Sale Agreement. Lender in its reasonable discretion, may grant other credits as agreed to by the parties or as listed in the Purchase and Sale Agreement, if any.
7. **SECURITY.** That certain Deed of Trust of even date herewith executed by Borrower, as "Trustor", for the benefit of Lender, as "Beneficiary."
8. **DEFAULT UNDER DEED OF TRUST.** If default occurs in any of the covenants or agreements contained in the Deed of Trust securing this Promissory Note, this Promissory Note shall immediately become due and payable in full at the option of Lender. Failure by Lender to exercise its option to accelerate in the event of a default shall not constitute waiver of the right to exercise such option in the event of the same or any other default.
9. **REMEDIES.** Lender shall have available any such remedy provided by law or equity including foreclosure.
10. **WAIVER.** Borrower hereby waives diligence, demand for payment, presentment for payment, protest, notice of nonpayment, notice of protest, notice of intent to accelerate, notice of acceleration, notice of dishonor, and all other notices or demands of any kind (except notices specifically provided for in the Note and Deed of Trust, if any). Borrower waives to the full extent permitted by law, the right to plead any and all statutes of limitations and/or any defenses relating to marshaling of assets as a defense.
11. **SEVERABILITY.** The covenants of this Promissory Note are severable. Invalidation of any covenant or any part thereof by law, judgment, or court order shall not affect the validity of any other covenant.
12. **REPRESENTATIONS OF BORROWER.** Borrower represents and warrants that it has the legal authority and ability to comply with the terms and conditions contained in this Note and the Deed of Trust. Should any terms or conditions of this Note or Deed of Trust be deemed invalid due to Borrower's status as a public school district or for failure of Borrower to comply with any required procedures, Borrower shall immediately pay the remaining unpaid Principal Balance or make all reasonable efforts to enter into an enforceable agreement with Lender to fulfil the intent of this Note, as determined by Lender.
13. **COSTS AND ATTORNEYS' FEES.** The undersigned agrees to pay all reasonable costs including, without limitation, reasonable attorney fees, incurred by the holder of this Note in enforcing payment, whether or not suit is filed, including, without limitation, all costs, attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by the holder of this Note of its rights and remedies under this Note. All costs incurred by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by the

undersigned. Borrower will pay to Lender all attorney fees and other costs referred to in this section on demand, together with interest from the date of the demand at the Default Rate until paid.

15. INTEREST RATE LIMITATION. Borrower hereby agrees to pay an effective rate of interest that is the sum of the interest rate provided for herein, together with any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid in connection with the Loan, including, without limitation, any other fees to be paid by Borrower pursuant to the provisions of the Note and Deed of Trust. Lender and Borrower agree that none of the terms and provisions contained herein or in any of the Note and Deed of Trust shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if any holder of this Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of California, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of the holder, be credited to the payment of other amounts payable under this Note and/or the Deed of Trust or returned to Borrower.

16. NUMBER AND GENDER. In this Note the singular shall include the plural and the masculine shall include the feminine and neuter gender, and vice versa.

17. HEADINGS. Headings at the beginning of each numbered section of this Note are intended solely for convenience and are not part of this Note.

18. CHOICE OF LAW. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES.

19. INTEGRATION. The Note and Deed of Trust contain the complete understanding and agreement of the holder hereof and Borrower and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

20. BINDING EFFECT. The Note and Deed of Trust will be binding upon, and inure to the benefit of, the holder hereof, Borrower, and their respective successors and assigns. Borrower may not assign its obligations under the Note and Deed of Trust.

21. TIME OF THE ESSENCE. Time is of the essence with regard to each provision of the Note and Deed of Trust as to which time is a factor.

22. SURVIVAL. The representations, warranties, and covenants of the Borrower in the Note and Deed of Trust shall survive the execution and delivery of the Note and Deed of Trust and the making of the Loan.

24. JURY WAIVER. TO THE EXTENT PERMITTED BY LAW, BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS NOTE OR ANY OTHER RELATED DOCUMENT OR LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER NOTE AND DEED OF TRUST.

BORROWER

Name

Acknowledgement

Lender

DRAFT

EXHIBIT A
Form of
Deed of Trust

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Milpitas
Attention: City Manager
455 East Calaveras Boulevard, 3rd Floor
Milpitas, California 95035

Exempt from Filing Fees Gov. Code Section 27383

(Space above line for use by Recorder)

The Undersigned Grantor(s) Declare(s):

DOCUMENTARY TRANSFER TAX \$ _____; CITY TRANSFER TAX \$ _____; SURVEY
MONUMENT FEE \$ _____

- ☐ computed on the consideration or full value of property conveyed, OR
☐ computed on the consideration or full value less value of liens and/or encumbrances
remaining at time of sale,
☐ unincorporated area; ☐ City of Milpitas, and

DEED OF TRUST

THIS DEED OF TRUST is made this first __ day of August, 2016, among Milpitas Unified School District, a public school district organized and existing under the laws of the State of California ("Borrower" or "Trustor"); _____ ("Trustee"); and the City of Milpitas, a municipal corporation of the State of California ("Lender" or "Beneficiary"), and is executed to secure that certain Promissory Note ("Promissory Note") of even date herewith in the principal amount, plus interest thereon when applicable, as provided by said Promissory Note.

This Deed of Trust is made with respect to that certain Promissory Note dated as of October 21, 2014, as amended by the First Amendment to Purchase and Sale Agreement dated October 6, 2015, and the Second Amendment to Purchase and Sale Agreement dated _____ (as amended, the "Purchase and Sale Agreement") and that certain Promissory Note dated as of _____ (the "Promissory Note").

1. Grant in Trust and Security Agreement. Trustor irrevocably grants, transfers and assigns to Trustee, in trust, with power of sale, for the benefit of Beneficiary, the following:

- (a) That certain real property located in the City of Milpitas, County of Santa Clara, State of California and known as a portion of the McCandless Property, more particularly described in Exhibit 1 attached hereto and incorporated herein by reference (the "Land"); and
- (b) All buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements"); and
- (c) All other rights and interests now or in the future benefiting or otherwise relating to the Property or the Improvements, including easements, rights-of-way, water rights and

water stock (the "Appurtenances," and together with the Land and the Improvements, the "Property" or the "Trust Estate").

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (the "Secured Obligations"): (a) all present and future indebtedness evidenced by the Promissory Note, (b) all present and future obligations of Trustor to Beneficiary under this Deed of Trust, the Promissory Note and the Purchase and Sale Agreement; and (c) all additional present and future obligations of Trustor to Beneficiary under any other agreement which is secured by this Deed of Trust.

3. Trustor's Covenants. To protect the security of this Deed of Trust, Trustor agrees as follows:

3.1 Payment and Performance of Secured Obligations. Trustor shall pay and perform all Secured Obligations in accordance with their respective terms.

3.2 Liens and Taxes. Trustor shall pay, prior to delinquency, all taxes and perform all other obligations which are or may become a lien affecting any part of the Property.

3.3 Insurance. Trustor shall maintain insurance on the Property and shall annually provide a current, valid certificate of insurance to the with both the Trustee and Beneficiary named as additional insureds.

4. Obligations With Respect to Property. Neither Beneficiary nor Trustee shall be under any obligation to preserve, maintain or protect the Property or any of Trustor's rights or interests in the Property, or take any action with respect to any other matters relating to the Property. Beneficiary and Trustee do not assume and shall have no liability for any of Trustor's obligations with respect to any rights or any other matters relating to the Property.

5. Remedies Upon Event of Default. Upon the occurrence of any Event of Default (defined in Section 6 hereof): (i) all Secured Obligations shall immediately become due and payable without further notice to Trustor; (ii) upon demand by Beneficiary, Trustor shall pay to Beneficiary sums which will be sufficient to pay all taxes which are or may become a lien affecting the Property and the premiums for any policies of insurance to be maintained hereunder. In addition, Beneficiary may, without notice to or demand upon Trustor, exercise any one or more of the following remedies, either directly or through Trustee, an agent or court-appointed receiver:

(a) Enter, take possession of, manage, and exercise any other rights of an owner of the Property, and use any other properties of Trustor relating to the Property, all without payment of rent or other compensation to Trustor;

(b) Conduct any business of Trustor in relation to the Property and deal with Trustor's creditors, debtors, tenants, agents and employees and any other persons having any relationship with Trustor in relation to the Property;

(c) Take such other action as Beneficiary deems appropriate to protect the security of this Deed of Trust.

Beneficiary may execute and deliver to Trustee written notice of default and of its election to cause all or any part of the Property to be sold, which notice Trustee shall cause to be filed for record; and after the lapse of such time as may then be required by law following the recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand

on Trustor, shall sell such Property at the time and place fixed by it in such notice of sale, either as a whole or in separate parcels and in such order as Beneficiary may direct (Trustor waiving any right to direct the order of sale), at public auction to the highest bidder for cash in lawful money of the United States (or cash equivalents acceptable to Trustee to the extent permitted by applicable law), payable at the time of sale. Any person, including Trustee or Beneficiary, may purchase at such sale, and any bid by Beneficiary may be, in whole or in part, in the form of cancellation of all or any part of the Secured Obligations. Any such sale shall be free and clear of any interest of Trustor and any lease, encumbrance or other matter affecting the property so sold which is subject or subordinate to this Deed of Trust.

All proceeds of collection, sale or other liquidation of the Property shall be applied first to all costs, fees, expenses and other amounts (including interest) payable by Trustor under this Deed of Trust and to all other Secured Obligations not otherwise repaid in such order and manner as Beneficiary may determine, and the remainder, if any, to the person or persons legally entitled thereto.

Each of the remedies provided in this Deed of Trust is cumulative and not exclusive of, and shall not prejudice, any other remedy provided in this Deed of Trust or by applicable laws and shall be subject and subordinate to the remedies of any holder of a senior lien permitted hereunder. Trustor, for itself and for any other person claiming by or through Trustor, waives, to the fullest extent permitted by applicable laws, all rights to require a marshaling of assets by Trustee or Beneficiary or to require Trustee or Beneficiary to first resort to any particular portion of the Property or any other security (whether such portion shall have been retained or conveyed by Trustor) before resorting to any other portion, and all rights of redemption, stay and appraisal.

6. Event of Default. An "Event of Default" shall be deemed to occur if Trustor is in material breach of any of its obligations under the Promissory Note or this Deed of Trust and such breach is not cured within thirty (30) days after Trustor receives written notice of such breach.

7. Transfer of Trust Estate by Trustor. In order to induce Beneficiary to make the loan, Trustor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Beneficiary, Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable and to declare an Event of Default. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such Transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor (if any) of the Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, "Transfer" shall mean:

- (a) any sale, transfer, conveyance, assignment, hypothecation, mortgage, encumbrance, lease (except as expressly permitted by the Note and Deed of Trust) or vesting of the Trust Estate or any part thereof or interest therein to or in any person, firm or entity, whether voluntary, involuntary, by operation of law, or otherwise, provided, however, that the foregoing shall not include the granting of utility easements in the normal course of Trustor's business;
- (b) any merger, consolidation, bankruptcy or dissolution of Trustor;
- (c) any sale or transfer of substantially all of the assets of Trustor; and
- (d) the execution of any agreements to do any of the foregoing."

7. Costs, Fees and Expenses. Trustor shall pay, on demand, all costs, fees, expenses, advances, charges, losses and liabilities of Trustee and Beneficiary under or in connection with this Deed of Trust or the enforcement of, or the exercise of any remedy or any other action taken by Trustee or Beneficiary under, this Deed of Trust or the collection of the Secured Obligations, in each case including (i) reconveyance and foreclosure fees of Trustee, (ii) costs and expenses in connection with the operation, maintenance, preservation, or sale of the Property or foreclosure of this Deed of Trust, (iii) advances made by Beneficiary to complete or partially construct all or any part of any construction on the Land, (iv) cost of evidence of title, and (v) the reasonable fees and disbursements of Trustee's and Beneficiary's legal counsel.
8. Late Payments. By accepting payment of any part of the Secured Obligations after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other Secured Obligations or to declare a default for failure to so pay.
9. Reconveyance. Upon written request of Beneficiary and surrender of this Deed of Trust and the Promissory Note to Trustee for cancellation or endorsement, and upon payment of its fees and charges, Trustee shall reconvey, without warranty, all or any part of the Property then subject to this Deed of Trust. Any reconveyance, whether full or partial, may be made in terms to "the person or persons legally entitled thereto", and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Beneficiary shall not be required to cause any Property to be released from this Deed of Trust until final payment and performance in full of all Secured Obligations and termination of all obligations of Beneficiary under or in connection with the Promissory Note or until the Secured Obligations are forgiven.
10. Substitution of Trustee. Beneficiary may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust.
11. Successors and Assigns. This Deed of Trust applies to and shall be binding on and inure to the benefit of all parties to this Deed of Trust and their respective successors and permitted assigns.
12. Acceptance. Notice of acceptance of this Deed of Trust by Beneficiary or Trustee is waived by Trustor. Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.
13. Governing Law. This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of California.
14. Request for Notice. Trustor requests that a copy of any notice of default and a copy of any notice of sale be mailed to Trustor at Trustor's address set forth above

[Signatures on following pages]

SIGNATURE PAGE TO
DEED OF TRUST

TRUSTOR:

By: _____
Name

Its: _____

DRAFT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGEMENTS

State of California
County of _____

On _____ before me, _____,
notary public, personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing Section is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGEMENTS

State of California
County of _____

On _____ before me, _____,
notary public, personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing Section is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT 1
TO
DEED OF TRUST

Legal Description of the Land

The real property is situated in the City of Milpitas, County of Santa Clara, State of California, and is described as follows:

Legal Description

An approximately 6.7 acre portion of:

the following described property in the City of Milpitas, County of Santa Clara, State of California:

PARCELS 2 AND 3 AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS, PAGE(S) 41, 42 AND 43.

EXCEPTING FROM THE NORTHERLY 50 FEET OF PARCEL 3:

ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AND LYING BELOW A PLANE WHICH IS 500 FEET BELOW THE SURFACE OF THE GROUND, PROVIDED HOWEVER, THAT ANY EXPLORATION FOR OR REMOVAL OF ANY SUCH OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM SHALL BE BY MEANS OF SLANT DRILLING OR TUNNELING FROM LANDS ADJACENT TO SAID REAL PROPERTY OR OTHER METHODS NOT REQUIRING OPERATIONS OF THE SURFACE OF SAID REAL PROPERTY AND SHALL BE PERFORMED SO AS NOT TO ENDANGER SAID SURFACE OR ANY STRUCTURE WHICH SHALL BE ERECTED OR CONSTRUCTED THEREON, AS RESERVED IN THE GRANT DEED EXECUTED BY PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED DECEMBER 24, 1975 IN BOOK B788, PAGE 512 OFFICIAL RECORDS.

* The exact area will be determined after soil testing and other studies conducted by District. A plat map and legal description of the approximate 6.7 acres will be inserted prior to Close of Escrow and replace the above legal description.

Exhibit B to Promissory Note

Legal Description of Land

The real property is situated in the City of Milpitas, County of Santa Clara, State of California, and is described as follows:

Legal Description

An approximately 6.7 acre portion of:

the following described property in the City of **Milpitas**, County of **Santa Clara**, State of **California**:

PARCELS 2 AND 3 AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS, PAGE(S) 41, 42 AND 43.

EXCEPTING FROM THE NORTHERLY 50 FEET OF PARCEL 3:

ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AND LYING BELOW A PLANE WHICH IS 500 FEET BELOW THE SURFACE OF THE GROUND, PROVIDED HOWEVER, THAT ANY EXPLORATION FOR OR REMOVAL OF ANY SUCH OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM SHALL BE BY MEANS OF SLANT DRILLING OR TUNNELING FROM LANDS ADJACENT TO SAID REAL PROPERTY OR OTHER METHODS NOT REQUIRING OPERATIONS OF THE SURFACE OF SAID REAL PROPERTY AND SHALL BE PERFORMED SO AS NOT TO ENDANGER SAID SURFACE OR ANY STRUCTURE WHICH SHALL BE ERECTED OR CONSTRUCTED THEREON, AS RESERVED IN THE GRANT DEED EXECUTED BY PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED DECEMBER 24, 1975 IN BOOK B788, PAGE 512 OFFICIAL RECORDS.

* The exact area will be determined after soil testing and other studies conducted by District. A plat map and legal description of the approximate 6.7 acres will be inserted prior to Close of Escrow and replace the above legal description.

MONUMENT TABLE		
FOUND MONUMENT	DESCRIPTION	REFERENCE
M2	FOUND BRASS DISK STAMPED "RCE 24281", IN MONUMENT WELL. ACCEPTED AS CENTERLINE INTERSECTION McCANDLESS DRIVE & NEWBERRY STREET.	862 MAPS 35-39
M1110	FOUND BRASS DISK STAMPED "LS 7176", IN MONUMENT WELL. ACCEPTED AS 5' PERPENDICULAR OFFSET TO ACTUAL CENTERLINE INTERSECTION McCANDLESS DRIVE & LEE WAY.	858 MAPS 21-32
M1108	FOUND 3/4" IRON PIPE, OPEN. ACCEPTED AS INTERSECTION OF NORTHERLY LINE OF PG&E EASEMENT (C288 OR 106) AND EASTERLY LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY PARCEL.	662 MAPS 5-6
M1109	FOUND 3/4" IRON PIPE, OPEN. ACCEPTED AS INTERSECTION OF SOUTHERLY LINE OF PG&E EASEMENT (C288 OR 106) AND EASTERLY LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY PARCEL.	662 MAPS 5-6
M1101	FOUND BRASS DISK STAMPED "RCE 14392", IN WELL MONUMENT. ACCEPTED AS 5' PERPENDICULAR OFFSET TO CENTER OF CUL-DE-SAC, HORET DRIVE.	536 MAPS 41-43
M1104	FOUND BRASS DISK STAMPED "RCE 14766", IN MONUMENT WELL. ACCEPTED AS CENTERLINE INTERSECTION SANGO COURT AND MONTAGUE EXPRESSWAY.	417 MAPS 3-4
M148	FOUND BRASS DISK STAMPED "RCE 14766", IN MONUMENT WELL. ACCEPTED AS CENTERLINE INTERSECTION HORET DRIVE AND MONTAGUE EXPRESSWAY.	417 MAPS 3-4
M140	FOUND BRASS DISK STAMPED "RCE 14766", IN MONUMENT WELL. ACCEPTED AS 5' PERPENDICULAR OFFSET TO ACTUAL END CURVE POINT ON CENTERLINE HORET DRIVE.	417 MAPS 3-4
M147	FOUND BRASS DISK STAMPED "RCE 14766", IN MONUMENT WELL. ACCEPTED AS 5' PERPENDICULAR OFFSET TO ACTUAL BEGIN CURVE POINT ON CENTERLINE HORET DRIVE.	417 MAPS 3-4
M122	FOUND BRASS DISK STAMPED "RCE 14392", IN WELL MONUMENT. ACCEPTED AS 5' PERPENDICULAR OFFSET TO CENTER OF McCANDLESS DRIVE AT CURVE POINT.	536 MAPS 41-43
M123	FOUND BRASS DISK STAMPED "RCE 14392", IN WELL MONUMENT. ACCEPTED AS 5' PERPENDICULAR OFFSET TO CENTER OF McCANDLESS DRIVE AT CURVE POINT.	536 MAPS 41-43
M124	FOUND BRASS DISK STAMPED "RCE 14392", IN WELL MONUMENT. ACCEPTED AS 5' PERPENDICULAR OFFSET TO CENTER OF McCANDLESS DRIVE AT CURVE POINT.	536 MAPS 41-43
M1102	FOUND BRASS DISK STAMPED "LS 7176", IN WELL MONUMENT. ACCEPTED AS 5' PERPENDICULAR OFFSET TO CENTER OF McCANDLESS DRIVE AT INTERSECTION DELONG LANE.	858 MAPS 21-32

MONUMENT TABLE		
FOUND MONUMENT	DESCRIPTION	REFERENCE
M141	FOUND BRASS DISK STAMPED "RCE 14766", IN MONUMENT WELL. ACCEPTED AS 5' PERPENDICULAR OFFSET TO ACTUAL BEGIN CURVE POINT ON CENTERLINE HORET DRIVE.	417 MAPS 3-4
M142	FOUND BRASS DISK STAMPED "RCE 14766", IN MONUMENT WELL. ACCEPTED AS 5'x5' PERPENDICULAR OFFSET TO ACTUAL CENTERLINE INTERSECTION HORET DRIVE AND HORET COURT.	417 MAPS 3-4
M143	FOUND BRASS DISK STAMPED "RCE 14766", IN MONUMENT WELL. ACCEPTED AS 5' PERPENDICULAR OFFSET TO ACTUAL END CURVE POINT ON CENTERLINE HORET DRIVE.	417 MAPS 3-4
M129	FOUND 3/4" IRON PIPE TAGGED "RCE 18764". ACCEPTED AS BEGINNING OF CURVE POINT ON NORTHWESTERLY RIGHT-OF-WAY LINE OF MONTAGUE EXPRESSWAY.	605 MAPS 42

LINE TABLE		
LINE #	DIRECTION	LENGTH
L4	N24°41'05"W	71.77'
L5	N27°38'51"W	41.03'

CURVE TABLE			
CURVE #	RADIUS	DELTA	LENGTH
C7	1720.99'	7°31'13"	225.88'
C8	311.53'	4°53'37"	26.61'
C9	631.07'	4°30'44"	49.70'
C10	143.50'	9°19'34"	23.36'
C11	2276.64'	2°22'46"	94.54'
C12	2276.64'	1°23'34"	55.35'
C13	2545.01'	3°53'30"	172.87'

PARCEL MAP

MILPITAS UNIFIED SCHOOL DISTRICT

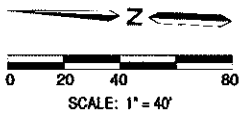
BEING ALL OF PARCELS 2 AND 3 OF THE PARCEL MAP FILED IN BOOK 536 OF MAPS AT PAGES 41, 42 & 43, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

CITY OF MILPITAS
SANTA CLARA COUNTY, CALIFORNIA
JUNE 2016

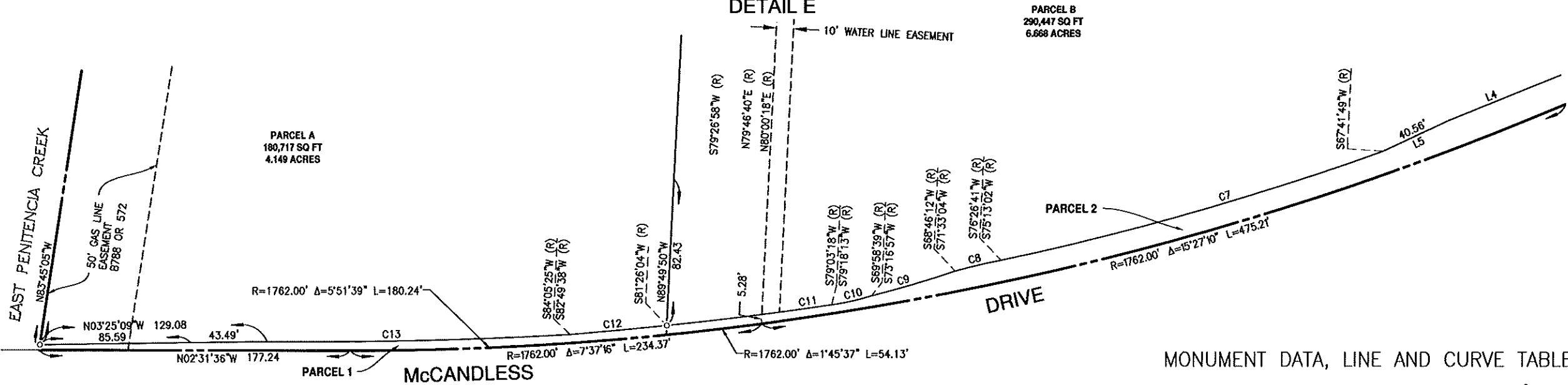


ABBREVIATIONS

(M) MEASURED DISTANCE
MAPS RECORD MAPS, SANTA CLARA COUNTY RECORDS
OR OFFICIAL RECORDS OF SANTA CLARA COUNTY
(R) RADIAL BEARING



DETAIL E



6/1/2016 10:05 AM

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:	100-3770	\$9,134,052	100-2940	\$9,134,052
<input checked="" type="checkbox"/> Budget Appropriation				
<input type="checkbox"/> Budget Transfer				

Adopt a Resolution Approving Amendment No. 2 to the Purchase and Sale Agreement Between the City of Milpitas and the Milpitas Unified School District to Implement an Installment Payment Plan to Extend through October, 2017 and approve the related budget adjustment for the anticipated 2016-17 sales proceeds (Staff Contact: Russell Morreale, 408-586-3111)

Background:

On October 21, 2014, the City of Milpitas and the Milpitas Unified School District ("District") entered into a Purchase and Sale Agreement dated October 21, 2014, and amended by the First Amendment to Purchase and Sale Agreement dated October 6, 2015 (as amended, the "Purchase and Sale Agreement") for the District to purchase 6.7 acres of City owned property on McCandless Drive. The District's intended use for this particular site is to construct a new elementary school. Amendment #1 formalized a one year extension of the close of escrow date to October 21, 2016 to address the completion of a required Environmental Impact Report. The EIR has been completed and along with any required site remediation work.

Amendment #2, the subject of this staff report action, was presented and discussed in a meeting held with the City of Milpitas – Milpitas Unified School District Joint Communications Committee on August 9, 2016. The items were reviewed and unanimous concurrence obtained from all voting members of both agencies to bring the item forward to City Council.

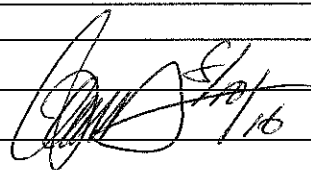
Amendment #2 solidifies the District's desire to complete the land purchase on or before the same date of October 21, 2016. In fact, the District expressed an interest to close in September if at all possible. The essence of the amendment is as follows: (1) it introduces a revised payment plan to allow for the purchase price per acre (remaining unchanged at \$3,100,000/acre) to be paid in two installments over a 12 month term (50% at the close of Escrow and 50% 12 months thereafter); (2) it includes the requirement of a zero-interest Promissory note between the District and the City secured by a secured deed of trust on the underlying subject property; (3) it adjusts the purchase price to the final map acceptance of 6.668 acres, or a value of \$20,670,800 (see attached updated site map); and (4) it allows for the reimbursement (subject to the City's review of supporting cost documentation) to the District, out of sales proceeds, of costs they incurred for site remediation work performed (valued at \$1,151,347.72).

Fiscal Impact: The former redevelopment agency purchased the McCandless land to be developed into a park and elementary school using former RDA funds. Upon the dissolution of the RDA, the City paid for the part of the site to be sold to the School using General Fund dollars. As such, proceeds of the subject sale will reimburse the General Fund. The anticipated proceeds of the sale, including both installments, will amount to the \$20,670,800 less remediation cost reimbursements to the District and resulting escrow fees.

Recommendations: Adopt a Resolution Approving Amendment No. 2 to the Purchase and Sale Agreement Between the City of Milpitas and the Milpitas Unified School District to Implement an Installment Payment Plan to Extend through October, 2017 and approve the related budget adjustment for the anticipated 2016-17 sales proceeds (Staff Contact: Russell Morreale, 408-586-3111)

☒ Check if City Council Approval required.

Meeting: August 16th 2016

Itemization of funds, if needed:			Amount
Requested by:	Department Head: Russell J. Morreale		Date: 8/10/16
Reviewed by:	Finance Director:		Date:
Approved by:	City Manager:		Date:
Date approved by City Council, if required:			Confirmed by: